



# CLIENT ALERT

October 2, 2018

1

## INTERNATIONAL TRADE

### THE UNITED STATES-MEXICO-CANADA AGREEMENT (USMCA)

by Daniel D. Ujcz

The United States, Canada, and Mexico reached a trilateral agreement as part of the renovation of the North American Free Trade Agreement (NAFTA) on September 30, 2018. Preliminarily styled the United States-Mexico-Canada Agreement (USMCA), the text is available at <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-states-mexico>. The negotiators from all three countries deserve high praise for their efforts to conclude the deal at a rapid timing and tempo. The available text nevertheless has some deficiencies, including missing references to “Canada”, in multiple areas. It is important for all companies to commence reviewing the text to determine the potential impacts on their operations. While many of the NAFTA’s provision are left intact, there will be changes for ALL companies. The time is now to begin these preparations. Dickinson Wright is available to assist.

As a starting point, the published USMCA text largely is consistent with the presentations made during Dickinson Wright’s recent webinar Know the New NAFTA. Interested parties should see the webinar and accompanying presentation for additional information regarding the USMCA. <https://www.dickinson-wright.com/events/know-the-new-nafta-webinar-dan-ujcz>

#### Additional Observations from the USMCA Text

1. Structure - Contrary to the narrative that the US Trade Representative was “red in tooth and claw” and tearing up existing North American supply and value chains, the USMCA text preserves significant components of the existing NAFTA, and more than two-thirds of the chapters can be traced to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP). In many chapters, the text eschews the original organization of the NAFTA and mirrors the CPTPP. All companies will need to review and edit documents/certificates to account for this reorganization.
2. Rules of Origin - The USMCA text preserves most of the original NAFTA’s rules of origin (ROO) methodologies but incorporates CPTPP principles. While these hybrid “in the weeds” changes will not grab headlines, all companies will need to review these changes to ensure existing and planned operations comply with the likely ROO. Autos, textiles, agriculture, polymers, and chemicals all have heavily revised ROO warranting close inspection.
3. US Policy Objectives - From the Preamble forward, the US advances its policy objectives of moving production back to North America and allowing trade enforcement. There is an interesting definitional change to “customs duty” that is not found in the original NAFTA nor CPTPP that potentially will provide the US with greater flexibility to impose import restrictions (e.g., tariffs). It is not an overstatement to advise that the US has made progress on virtually all of its July 2017 NAFTA objectives. In the limited areas where the US has made concessions—such as, seasonality provisions with Mexico and government procurement—there are now US domestic actions (e.g., Buy American, Hire American) or legislation pending that will seek to achieve US goals. The dispute resolution system formerly known as Chapter 19 appears to be the only area where the US actually conceded without any fallback position.
4. Canada’s Objectives - Canada largely preserved the fka Chapter 19 dispute resolution system and cultural exemptions, as well as supported progress in the automotive ROO, labor, and environmental chapters.
5. Supply Management / Dairy - Canada’s supply management/dairy concessions go beyond CPTPP and equate to a 3.58% to 3.75% market access concession (CPTPP was 3.25%), as well as the elimination of Class 6 & 7 dairy pricing schemes that were an alleged source of injury to US dairy farmers in Wisconsin, New York State and Vermont. Additionally, there are restrictions on the amount of dairy powders that Canada can export into the global market and greater transparency/consultations required before Canada can make any further changes to supply management. Moreover, there appears to be greater access provided to the US on poultry (turkey) and eggs.
6. Intellectual Property - Canada made concessions on data protection for biologics (10 years) and copyrights (75 years) that went beyond any CPTPP proposals. Additionally, Canada agreed to stop in-transit IPR violations, a key US request over the past several years. Further, Canada agreed to a notice-and-takedown provisions that it previously was unwilling to adopt as part of CPTPP.
7. Express Shipments / De Minimis The US requested that Canada and Mexico raise its de minimis threshold for small package/express shipments to USD 800. Mexico agreed to USD 100, where no package would be assessed duties nor sales tax at or below that amount. The US-Mexico provision was global in scope (as opposed to applying to only North America). Canada agreed to a \$150 with the following components: (a) Canadian dollars; (b) only \$40 is sales tax free (meaning \$110 is subject to sales tax); and (c) applies only to North American shipments. This concession is still higher than retailers deemed necessary to protect their domestic operations.
8. Modernization - Companies operating in the three countries will benefit from innovative customs and trade facilitation (e.g., borders), digital, and a series of red-tape cutting measures throughout the agreement. The agreement also includes for the first time in a US trade deal currency manipulation and state-owned enterprises chapters.

9. Immigration - The original NAFTA's temporary entry (immigration) system is largely preserved with a few minor enhancements. Dickinson Wright's immigration team will be providing ongoing guidance on this matter.
10. Section 232s - The steel and aluminum tariffs imposed by the US on Canada and Mexico, and the resulting retaliation, will continue with an agreement between the parties to resolve the issues. We anticipate these tariffs and retaliation to be resolved no later than the late November signing of the Agreement.

With regard to autos tariffs, the US-Canada side letter largely mirrors the US-Mexico letter, with caps at \$2.6 million in vehicles and \$180B in auto parts. It is important that this side letter only comes into play for non-conforming autos AND the imposition of tariffs. Vehicles and auto parts that conform with the USMCA auto ROO as previously described in Dickinson Wright's client alerts and webinar, will not be exposed to future auto tariffs. The parties also agree to consult for 60 days before imposing any new tariffs of this kind.

#### Next Steps

- Consultations will continue with the private sector in all three countries and the respective legislative bodies (e.g., US Congress) for 60 days. Again, now is the time to get engaged.
- The parties will sign the agreement in late November (60 days from now).
- The parties will begin preparations for ratification by their domestic processes. In the US, this will require a series of analyses—including a large scale review by the International Trade Commission—to examine economic impact, labor market impacts, etc. These will be completed, if on schedule, by late February/March.
- The process will continue with the draft legislation presented to US Congress in Spring 2019 for an up and down vote.
- Processes will advance in Mexico and Canada.

Dickinson Wright is available to assist all companies assess impact on their operations and develop strategies for engagement during the consultation and legislative processes. While there is time to prepare for the USMCA, there is little actual time to advance changes, if needed. As repeatedly advised, the time is now.

*This client alert is published by Dickinson Wright PLLC to inform our clients and friends of important developments in the field of international trade law. The content is informational only and does not constitute legal or professional advice. We encourage you to consult a Dickinson Wright attorney if you have specific questions or concerns relating to any of the topics covered in here.*

FOR MORE INFORMATION CONTACT:



**Daniel D. Ujcz** is a Of Counsel and Cross-Border Business Development Director in Dickinson Wright's Columbus office. He can be reached at 614-744-2579 or [dujcz@dickinsonwright.com](mailto:dujcz@dickinsonwright.com).